

**OKLAHOMA LOTTERY COMMISSION  
BOARD OF TRUSTEES**

**Minutes of Meeting  
July 12, 2005  
1:30 PM**

**Members present:**

Mr. Ron Norick  
Mr. William Paul  
Mr. Thomas Riley, Jr.  
Mr. Jim Orbison  
Mr. George R. Charlton, Jr.  
Dr. Linda Dzialo  
Ms. Cindy Ball

**Others attending:**

Jim Scroggins, Executive Director of Lottery Commission  
Rollo Redburn, Lottery Commission  
Beverly Hughes, Lottery Commission  
Jerry Havener, Lottery Commission  
Gay Tudor, Office of the Attorney General  
Tony Thornton, The Oklahoman  
Angie Atauvich, GIT/Capitol News Network  
Jeff Packham, Journal Record  
Patrick Shore, Derryberry Law Firm  
Tim Martin, State Bond Advisor's Office  
Franklin Jay Kivel  
Bobby Stem, G-Tech  
Joe Varndran  
Rita Hall  
Luke Engan, CNH/News Service  
Mick Thinton, Tulsa World  
Sandra Harrison, Andrews Davis, P.C.  
Joe Rocket, Andrews Davis P.C.  
Jim Weaver, Andrews Davis P.C.  
Jennifer McBee, Andrews Davis, P.C.

The Oklahoma Lottery Commission met on July 12, 2005 at approximately 1:30 pm in the Governor's large conference room on the 2<sup>nd</sup> Floor of the State Capitol. The meeting was held in accordance with the Open Meeting Act.

**ITEM 1**

**Call to Order. Roll Call and Announcement of Quorum.**

Roll was called, all members present and a quorum was declared.

**ITEM 2**

**Announcement of filing of special meeting notice and posting of the agenda in accordance with the Open Meeting Act.**

Posting of the special meeting notice and agenda were confirmed, in accordance with the Open Meeting Act.

**ITEM 3**

**Approval of Minutes of the July 7, 2005 Special Meeting**

Request was made for motion or comments regarding minutes of July 7, 2005 meeting.

Mr. Norick moved to accept minutes without corrections.

Ms. Dzialo and Mr. Charlton seconded.

Ms. Ball and Ms. Dzialo abstained. Mr. Charlton, Mr. Paul, Mr. Riley, and Mr. Orbison voted yes. Minutes were approved without correction.

**ITEM 4**

**Interim Committee of Operations and Structure Report – William Paul**

Mr. Paul stated all items his committee had been working on would be addressed under items listed later on the agenda, those being: employment of legal counsel; the advertising RFP; and financial matters headed up by treasurer.

Mr. Paul pointed out an item on the rear cover of the Oklahoma Bar Association Journal issue of June 25, with a full-page ad entitled “What Your Clients Need to Know About, and How They Can Benefit From Oklahoma’s Education Lottery.” The Journal was passed around for other members of the committee to see and comment upon.

**ITEM 5**

**Executive Director Report**

Mr. Scroggins stated that he and his staff have been working on RFP’s and will have some items on the agenda later. A question was asked about where to send resumes. Mr. Scroggins stated that sending them to us (OLC) was fine, and he would see that the resumes got to the right place.

**ITEM 6**

**Discussion and possible action regarding attorneys and/or firms to provide legal services for the Lottery Commission**

Mr. Paul reported receiving forty to fifty responses of interest and thirteen proposals in response to the RFP. Copies of the proposals were distributed to all the members of the Board of Trustees. The committee met by teleconference on Friday, July 1<sup>st</sup>, and did an initial screening. The committee evaluated the proposals using the following criteria and weights: individual experience and expertise, 15%; firm experience and stability (including the partners), 20%; understanding of and responsiveness to the RFP, 15%; ability to respond in a timely manner, 25%; and cost, 25%. Four finalists were selected and interviewed: Phillips McFall firm of Oklahoma City, the Lester Loving firm of Oklahoma City, the Derryberry Quigly firm of Oklahoma City, and the Andrews Davis firm of Oklahoma City. The final recommendation of the committee to the Board was the Andrews Davis firm of Oklahoma City. Mr. Paul invited comments or questions from the Board. Mr. Paul stated that the Attorney General would have final approval of the contract for legal services. He stated that if the Attorney General was available, the Board was to use their services. He requested Gay Tudor to confirm that he had correctly stated the procedure.

Ms. Tudor stated that was essentially correct, although there was “a little less approval” by the Attorney General’s office. If the Board or OLC wants to hire outside counsel, they must report to the Attorney General’s office, showing that they have used someone who is on the State list. The AG’s office compares the terms of the contract to be sure the fees in the contract match up to the State list. If the contract amount was for under \$20,000 (per fiscal year), the requesting agency would only be asked to explain why they were not using their own counsel or the AG’s Office to perform the work. Ms. Tudor was asked if approval must be sought before the board makes a decision on the contract. Ms. Tudor replied “no,” because the reason for the contract was just to have the contract in place when it was needed. The AG’s office would only be required to give approval if the contract amount exceeded, or was expected to exceed, \$20,000 within the fiscal year.

Mr. Paul stated that Mr. Scroggins was unavailable for the 9:00 interviews, but had appointed Rollo Redburn to act on his behalf. Mr. Paul stated the committee had concentrated heavily on rule drafting, and that the first priority would be the rules. Mr. Scroggins stated he expects to have a first draft available in approximately three days. Mr. Norick asked if Ed Barth would be the lead attorney on the project. Mr. Paul replied that the lead person would be Joe Rocket, although Ed Barth would also be part of the team. Mr. Norick stated Mr. Barth had been a volunteer on the MAPS project for approximately 11 years, and had done an excellent job.

Mr. Riley made a motion that the Board approve the committee’s recommendation to hire the Andrews Davis firm and the form of the contract that he had seen at 11:00 that morning, which underscored and clarified the AG’s role in the process.

Ms. Ball seconded the motion. Mr. Redburn was asked if the version of the contract seen this morning was the latest one. Mr. Redburn stated that one statement had been added at the bottom allowing the OLC to ask for electronic versions of any documents so copies could be made, if needed. The change was made available to the Board. Mr. Riley

amended his motion to consider this latest version of the contract. Motion was seconded by Mr. Charlton.

Ms. Tudor was asked whether billing rates should be inserted into the contract at this time. Ms. Tudor stated the firm with whom the contract was drawn would need to supply that information so the AG's office could compare the charges in the contract as being the same as those on the State list.

Mr. Charlton asked for clarification on a question he had asked previously. He pointed out that two of the applicants (one of whom was considered) did not follow the RFP. He requested clarification as to whether vendors who don't follow the RFP should be considered. Ms. Tudor stated it was up to the Board and that the DCS process allows minor compliance problems to be overlooked as long as they don't substantially effect the terms of the bid. Mr. Riley recommended that in the evaluation of future RFP's, weight be given to compliance so a record exists of how each proposal was scored.

Roll call: motion was passed without dissent.

#### **ITEM 7**

##### **Discussion and possible action regarding contracts for legal services**

Mr. Redburn presented the contract for legal representation from the Office of the Attorney General. He asked Ms. Tudor to verify that the contract terms provided for about ¼ of the time of a full-time attorney for \$26,000 annually. Ms. Tudor stated the contract was a very basic type used by the AG's office with other agencies. The contract is flexible and subject to modification based upon the actual time required. Although cost is usually based on a single attorney's salary and benefits, in this case the salary and benefits of several upper level people with different areas of expertise were considered to average the cost of ¼ FTE. Ms. Tudor briefly described the background, qualifications and expertise of the attorneys anticipated to work on the contract. She stated that the contract serves as a type of retainer and is an estimate of the services that may be required.

Mr. Scroggins added his praise for the work of Ms. Tudor and the AG's office and for their timely response to all questions submitted. Ms. Tudor confirmed that services provided to date were outside the contract at no additional cost to OLC.

Ms. Dzialo moved for approval of the contract for legal services from the Office of the Attorney General.

Mr. Paul seconded the motion.

In additional discussion, Mr. Riley stated that when possible, it would be helpful to receive advanced copies of documents to be considered by the Board.

Roll call: motion was passed without dissent.

## ITEM 8

### Discussion and possible action on advertising RFP for the Lottery Commission

Mr. Norick stated he wished to disclose a business relationship with a firm that could potentially bid on the advertising contract (Jordan Advertising). He stated his interest is phasing out and would not, in his opinion, represent a conflict of interest and that he would have nothing to gain or lose in the contract award. He further stated that he assumed the agency would disclose this relationship as part of the bid process, but that he wanted to disclose the information now to avoid questions about it later. He stated that although he felt there was no conflict of interest, he would be happy to discuss the matter with the AG's office if they had questions or disagreed with his assessment.

Mr. Scroggins stated he had two comments about RFP's in general:

1. he agreed that an advertising agency bidding on the contract would have to disclose Mr. Norick's involvement with their firm;
2. he wished to point out that Section 4.3 states any deviation from the requirements "*may* effect the evaluation of the proposal and *may* cause its rejection as non-responsive," and that there was other language allowing for determining if the deviation is significant enough to warrant removing the proposal from consideration.

Mr. Scroggins stated there had been several versions of the advertising RFP and he is currently looking at a version dated 7/12. Changes were discussed as follows:

1. Mr. Scroggins pointed out a change in section 2.2.1 (summary of key dates). In the revision, some dates were changed in order to provide the chosen agency almost a full five weeks to produce the initial campaign.
2. Mr. Norick explained a change he requested in 1.34 to say "OLC *or designee*." He stated that he felt the Board needs to designate the Director as being authorized to act on Board's behalf.
3. Mr. Scroggins pointed out a change in 3.4.2.1(c) (Media Planning). The initial language required vendors to evaluate *quarterly* media use. The revision substituted "monthly" for "quarterly."
4. Section 3.4.3.1 (d) was changed from "OLC may request vendor to offer three versions" to "OLC may request vendor to offer *up to* three versions.
5. Section 3.4.6.1 (Procurement of Prizes) was changed so the final sentence reads "...whenever such purchases are determined by OLC in the best interest of OLC."

Regarding paragraph 4.26, which talks about a two phase procedure, Mr. Scroggins suggested that agency presentations be taped and then shown to Board to avoid scheduling difficulties.

Mr. Scroggins invited questions regarding the changes. Mr. Riley and Mr. Norick asked about agencies being asked to do “creatives” before getting marketing plans. Procedure was discussed which calls for vendors to provide documentation of prior programs they’ve done. Finalists would then be selected and given one week to prepare a specific, small project which would be used as a tool for evaluation with the possible collateral benefit of being usable. This project could be something such as a “kick-off” to introduce the lottery to the public, and could be usable regardless of the marketing plan adopted.

Mr. Orbison inquired who would be in charge of contract compliance. Mr. Scroggins stated each of OLC’s product managers would monitor compliance for their area. Mr. Riley stated it would also be part of the internal audit function to verify compliance.

Mr. Riley asked a question regarding 2.5 (on page 13) -- how and/or why would advertising agency have access to confidential information. Mr. Scroggins replied that they won’t have any. It’s a perception issue.

On the “Engagement Specifications” section (page 14, 3.2), Mr. Riley asked why vendors were being required to “provide complete disclosure of lottery operations?” There was discussion of the meaning of this phrase and whether it should be removed or modified. Mr. Scroggins offered his interpretation that this referred to questions such as “odds on a game, prizes in a game, etc.” rather than other operational business such as dress code, disciplinary procedures, etc. The suggestion was made to remove “full and complete public disclosure of” and substitute “information on.”

Discussion was held concerning a portion of Section 3.4.1.1, which states “The vendor must *become* familiar with ...” regarding whether this phrase allows the hiring of a firm with no lottery experience and whether hiring an inexperienced company would be proper. Concerns were expressed that Oklahoma agencies would probably not have lottery experience, since the lottery is new to Oklahoma. Mr. Scroggins stated that in the past he had worked with both experienced and inexperienced advertising agencies, and that a good marketing company could be educated about the specifics of the lottery. A suggestion was made that the language be left “as is” in order to elicit as many proposals as possible, with decisions regarding experience addressed in the selection process.

A question was asked about 3.4.2.1 because section (a) says the vendor will analyze the marketing and advertising plan and section (b) says they will propose it. Mr. Scroggins stated he interpreted these paragraphs as follows: Paragraph (a) refers to the idea of promotional stretch plans, and one of the ways to accomplish that is to analyze the marketing advertising plan. Paragraph (b) refers to having immediate marketing plans for subsequent years. He stated that he feels the intention is to get the best ideas from the

collective expertise of all the vendors and then pull them together to come up with the best plan.

Mr. Norick stated he had questions regarding section 4.7.2 (financial soundness). He stated concern that information contained in a company's financial statements might contain private information about the company that might then be subject to public disclosure under the Open Records Act. Ms. Tudor stated she will need to check the specifics of the Act to see if some information could be kept confidential. Mr. Norick stated that the Board will need to be able to answer the question, as it will probably arise. Mr. Orbison pointed out that the attorney general can categorize some things under the act as confidential. Ms. Tudor responded that they probably wouldn't make a new category and it would be a "close call" situation. Mr. Riley pointed out the OLC can determine what's confidential (with the attorney general's approval). Mr. Norick stated he believed all records having to do only with the OLC contract will have to be provided. Ms. Tudor stated she would check to ascertain which information may be exempted from Open Records

Ms. Dzialo moved for approval of the advertising RFP.

Mr. Charlton seconded the motion.

Roll call: All members voted in favor and motion was passed.

## **ITEM 9**

### **Discussion and action on financing for the Lottery Commission**

Mr. Riley stated he had received draft documents just before today's meeting. Counsel for lender and counsel for OLC agreed to term "legally available revenues."

Mr. Riley stated he wished to clarify an issue discussed previously. He had told the Board that one of the proposers was still gathering information. Mr. Riley stated he conferenced with them on Friday and got a terms sheet from them yesterday. They reduced their pricing, but because of the commitment fee on undrawn funds, the net cost was still higher. He stated they could have changed their pricing after seeing the publication of the other, approved proposal.

Mr. Paul asked how long the \$500,000 would finance operations. Mr. Riley stated that as he had previously told the media, staff would have to tailor spending so they would not run out. More than half is still there.

Mr. Riley said he thought the thirty (30) day protest period may have started Friday. Ms. Tudor stated that according to Lynn Rogers, the documents looked fine, but he would have to have a bond transcript prior to commencing the thirty day period. She stated that Gary Bush would know what was needed. Mr. Orbison indicated we need to pin down when that period starts. Mr. Riley asked Ms. Tudor if she got the impression that Lynn had contacted Gary for that. Ms. Tudor said she took it that he got a copy of an e-mail

that had the documents attached and was only waiting for the hard transcript. Mr. Riley said he'd contact Gary after the meeting.

Mr. Orbison asked if we were okay. Mr. Riley said that the bank's counsel understands the language, will explain to the bank and they will be comfortable with it. Mr. Orbison asked if we were "on track" and Mr. Riley said "yes," we'd make sure that Mr. Rogers in the AG's office would get all the information he needed. Mr. Orbison thanked Mr. Riley for all of his work on this.

**ITEM 10**  
**Discussion on audits and internal controls**

Mr. Riley stated he wants to make sure we don't get to next June 30 and have an audit firm find our internal controls unsatisfactory. He suggested an RFP be used to select a firm, preferably with experience in gaming environments, to establish internal controls and then later have another firm do the audit. Discussion was held as to whether two auditing firms were preferable to one. Mr. Scroggins said that when ticket sales begin, there will be two vendors in place that have a lot of internal controls. Between the two vendors' controls, the lottery commission's internal auditor, and the firm we hire, they can do all the things that need to be in place when we do the financial audit at the end of the fiscal year. Mr. Scroggins stated he has a third version of the audit RFP which could be implemented fairly quickly containing language that says a vendor may do both if they are comfortable with that. Mr. Riley stated that internal controls need to be installed prior to October 12<sup>th</sup>. Although 404 process is not required, OLC process should be similar. SAS 70's must be furnished by vendors annually, but the OLC should not have to have systems installed every year.

**ITEM 11**  
**Discussion and possible action on budget issues**

Mr. Redburn stated there were no budget issues requiring discussion or action at this time.

**ITEM 12**  
**Scheduling of next special meeting**

The next meeting is scheduled for August 9<sup>th</sup>.

Mr. Paul introduced Joe Rocket and asked Mr. Rocket to introduce the other attorneys from their firm that were at the meeting. Mr. Rocket introduced Jennifer McBee, Sandra Harrison, and James Weaver.

A question was asked about the need for other meetings. Mr. Scroggins will get back to the Board. He stated the need for other meetings depended on how fast the other 2 RFP's (RFP for a facility to tape on-line drawings and an RFP to hire an audit firm to witness drawings and attest that they are held according to procedures) progressed. Those have



to be in place prior to beginning online sales. Brief discussion followed on drawing machine and building space.

In discussion regarding drawing machines, Mr. Scroggins stated that equipment is very expensive, and a decision must be made regarding whether to buy new equipment or used equipment. He stated that he knew of a lottery that was going with electronic drawings and would be surplus their equipment. He stated that this equipment would probably be available at a very good price – probably less than \$10,000 for what would be \$175,000 worth of equipment. Mr. Scroggins suggests that this equipment be purchased and could be refurbished, if necessary, and certified.

A question was asked about progress on the office space. Mr. Scroggins stated that there has been no change, and some discussion was held regarding the plans for remodeling the OLC office space.

Mr. Paul made a motion to meet August 9<sup>th</sup>, unless an earlier meeting is requested by the executive director and approved by the chairman.

Mr. Norick seconded the motion.

Roll call: motion passed without dissent.

**ITEM 13**  
**Adjournment**

Mr. Norick made a motion to adjourn the meeting. Ms. Ball seconded the motion.

Roll call: motion passed without dissent and meeting was adjourned.

Submitted by:

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Linda Dzialo, Secretary

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James Orbison, Chairman

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George Charlton, Acting Secretary